



## Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

11 April 2019 \*

(Reference for a preliminary ruling — Citizenship of the Union — Freedom of movement for persons — Directive 2004/38/EC — Right of free movement and residence within the territory of the Member States — Article 7(1)(a) — Employees and self-employed persons — Article 7(3)(c) — Right of residence for more than three months — National of a Member State who has worked in an employed capacity in another Member State for a period of two weeks — Involuntary unemployment — Retention of the status of worker for no less than six months — Entitlement to jobseeker's allowance)

In Case C-483/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Court of Appeal (Ireland), made by decision of 2 August 2017, received at the Court on 9 August 2017, in the proceedings

**Neculai Tarola**

v

**Minister for Social Protection,**

THE COURT (Third Chamber),

composed of M. Vilaras (Rapporteur), President of the Fourth Chamber, acting as President of the Third Chamber, J. Malenovský, L. Bay Larsen, M. Safjan and D. Šváby, Judges,

Advocate General: M. Szpunar,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 6 September 2018,

after considering the observations submitted on behalf of:

- Mr Tarola, by C. Stamatescu, Solicitor and D. Shortall, Barrister-at-Law,
- Ireland, by M. Browne, G. Hodge, A. Joyce and M. Tierney, acting as Agents, and by E. Barrington, Senior Counsel, and D. Dodd, Barrister-at-Law,
- the Czech Government, by M. Smolek, J. Pavliš and J. Vláčil, acting as Agents,
- the Danish Government, by P.Z.L. Ngo, acting as Agent,
- the German Government, by D. Klebs, acting as Agent,

\* Language of the case: English.

- the French Government, by D. Colas and R. Coesme, acting as Agents,
- the European Commission, by E. Montaguti, M. Kellerbauer and J. Tomkin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 15 November 2018,

gives the following

### Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 7(1)(a) and (3)(c) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, corrigenda OJ 2004 L 229, p. 35 and OJ 2005 L 197, p. 34).
- 2 The request has been made in proceedings between Mr Neculai Tarola and the Minister for Social Protection (Ireland), concerning the latter's refusal to grant Mr Tarola jobseeker's allowance.

### Legal context

#### *EU law*

- 3 Recitals 3, 9, 10 and 20 of Directive 2004/38 state:
  - '(3) Union citizenship should be the fundamental status of nationals of the Member States when they exercise their right of free movement and residence. It is therefore necessary to codify and review the existing Community instruments dealing separately with workers, self-employed persons, as well as students and other inactive persons in order to simplify and strengthen the right of free movement and residence of all Union citizens.
  - ...
  - (9) Union citizens should have the right of residence in the host Member State for a period not exceeding three months without being subject to any conditions or any formalities other than the requirement to hold a valid identity card or passport, without prejudice to a more favourable treatment applicable to jobseekers as recognised by the case-law of the [Court].
  - (10) Persons exercising their right of residence should not, however, become an unreasonable burden on the social assistance system of the host Member State during an initial period of residence. Therefore, the right of residence for Union citizens and their family members for periods in excess of three months should be subject to conditions.
  - ...
  - (20) In accordance with the prohibition of discrimination on grounds of nationality, all Union citizens and their family members residing in a Member State on the basis of this Directive should enjoy, in that Member State, equal treatment with nationals in areas covered by the Treaty, subject to such specific provisions as are expressly provided for in the Treaty and secondary law.'

4 Article 1 of the directive provides:

‘This Directive lays down:

(a) the conditions governing the exercise of the right of free movement and residence within the territory of the Member States by Union citizens and their family members;

...’

5 Article 7 of that directive, entitled ‘Right of residence for more than three months’, provides in paragraphs 1 and 3:

‘1. All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they:

(a) are workers or self-employed persons in the host Member State ...

...

3. For the purposes of paragraph 1(a), a Union citizen who is no longer a worker or self-employed person shall retain the status of worker or self-employed person in the following circumstances:

(a) he/she is temporarily unable to work as the result of an illness or accident;

(b) he/she is in duly recorded involuntary unemployment after having been employed for more than one year and has registered as a jobseeker with the relevant employment office;

(c) he/she is in duly recorded involuntary unemployment after completing a fixed-term employment contract of less than a year or after having become involuntarily unemployed during the first 12 months and has registered as a jobseeker with the relevant employment office. In this case, the status of worker shall be retained for no less than six months;

(d) he/she embarks on vocational training. Unless he/she is involuntarily unemployed, the retention of the status of worker shall require the training to be related to the previous employment.’

6 Article 14 of Directive 2004/38, entitled ‘Retention of the right of residence’, provides:

‘1. Union citizens and their family members shall have the right of residence provided for in Article 6, as long as they do not become an unreasonable burden on the social assistance system of the host Member State.

2. Union citizens and their family members shall have the right of residence provided for in Articles 7, 12 and 13 as long as they meet the conditions set out therein.

...’

7 Article 24 of that directive, entitled ‘Equal treatment’, provides in paragraph 1:

‘Subject to such specific provisions as are expressly provided for in the Treaty and secondary law, all Union citizens residing on the basis of this Directive in the territory of the host Member State shall enjoy equal treatment with the nationals of that Member State within the scope of the Treaty. The benefit of this right shall be extended to family members who are not nationals of a Member State and who have the right of residence or permanent residence.’

### *Irish Law*

- 8 Regulation 6(2)(a) and (c) of the European Communities (Free Movement of Persons) Regulations (No 2) 2006 ('the 2006 Regulations'), which transposed the provisions of Article 7(3) of Directive 2004/38 into Irish law, provides:
- (a) Subject to Regulation 20, a Union citizen may reside in the State for a period longer than three months if he or she –
- (i) is in employment or is self-employed in the State,
- ...
- (c) Subject to Regulation 20, a person to whom subparagraph (a)(i) applies may remain in the State on cessation of the activity referred to in that subparagraph if –
- ...
- (ii) he or she is in duly recorded involuntary unemployment after having been employed for more than one year and has registered as a jobseeker with a relevant office of the Department of Social and Family Affairs [(Ireland)] and FÁS [Foras Áiseanna Saothair (Irish Training and Employment Authority)] ...
- (iii) subject to subparagraph (d), he or she is in duly recorded involuntary unemployment after completing a fixed-term employment contract of less than a year or after having become involuntarily unemployed during the first year and has registered as a jobseeker with a relevant office of the Department of Social and Family Affairs and FÁS ...'

### **The dispute in the main proceedings and the question referred for a preliminary ruling**

- 9 The appellant in the main proceedings is a Romanian national who first arrived in Ireland in May 2007 where he was employed from 5 July to 30 July 2007, and again from 15 August to 14 September 2007. Although it has not been established whether he resided in Ireland between 2007 and 2013, it is, however, not disputed that he was subsequently employed in Ireland from 22 July to 24 September 2013 and from 8 July to 22 July 2014, and that he earned EUR 1 309 in respect of the latter period of employment. He also worked as a self-employed subcontractor from 17 November to 5 December 2014.
- 10 On 21 September 2013, the appellant in the main proceedings submitted to the Minister for Social Protection an application for jobseeker's allowance, which was refused on the ground that he had failed to produce evidence of his habitual residence in Ireland or means of support from 15 September 2007 to 22 July 2013.
- 11 On 26 November 2013, he then applied for supplementary welfare allowance. That application was also refused because he could not produce supporting documentation to demonstrate how he had supported himself and paid rent from September 2013 to 14 April 2014.
- 12 On 6 November 2014, the appellant in the main proceedings submitted a second application for jobseeker's allowance, which was refused on 26 November 2014 on the grounds that, since coming to Ireland, he had not worked for more than a year and the evidence produced was insufficient to establish Ireland as his habitual residence.
- 13 The appellant in the main proceedings therefore sought, before the Minister for Social Protection, a statutory review of the decision of 26 November 2014, which was dismissed on the ground that his short period of employment in July 2014 was not sufficient to revise the finding that he was not habitually resident in Ireland.

- 14 On 10 March 2015, he asked the Minister for Social Protection to review the decision of 26 November 2014, arguing, *inter alia*, that, pursuant to Article 7(3)(c) of Directive 2004/38, he had a right to reside in Ireland as a worker for the period of six months after the end of his employment in July 2014. That application was rejected by decision of 31 March 2015 on the ground that, since coming to Ireland, he had not worked for more than a year and he did not have sufficient independent resources to support himself.
- 15 The appellant in the main proceedings submitted an application for judicial review against that decision before the High Court (Ireland). That application was refused on 20 April 2016 on the ground that he did not satisfy the conditions laid down in Regulation 6(2)(c)(iii) of the 2006 Regulations. The High Court held that Mr Tarola could not be regarded as a ‘worker’ and thus as habitually resident in Ireland for the purpose of claiming social assistance in that capacity. It held that that provision applies only to persons who have been on fixed-term employment contracts of less than a year. It also held that the period of work completed by the appellant in the main proceedings from 8 July to 22 July 2014 could not be regarded as a fixed-term contract of employment within the meaning of that provision and that his situation was governed by Regulation 6(2)(c)(ii) of the 2006 Regulations. Accordingly, it found that, as the appellant in the main proceedings had not been able to establish that he had been in continuous employment for one year prior to applying for social assistance, the Minister for Social Protection was entitled to refuse that application.
- 16 On 5 May 2016, the appellant in the main proceedings brought an appeal against the dismissal of his action before the referring court, the Court of Appeal (Ireland), which considers that the central issue in the dispute in the main proceedings is whether a person who has worked for less than a year retains the status of worker within the meaning of Article 7(3)(c) of Directive 2004/38.
- 17 The referring court states, first of all, that, under EU law, persons who depend on social benefits should be cared for in their home Member State, as is apparent from recital 10 and Article 7(3)(c) of Directive 2004/38. Persons exercising their right of residence should not become an unreasonable burden on the social assistance system of the host Member State during an initial period of residence; therefore the exercise of that right for periods in excess of three months should be subject to conditions. It notes, however, that Article 7 of that directive gives effect to Article 45 TFEU, so that the general case-law of the Court on the meaning of ‘worker’, which has always been interpreted broadly, applies.
- 18 That court is therefore uncertain whether the appellant in the main proceedings must be considered to have retained his status of worker, within the meaning of Article 7(3)(c) of Directive 2004/38, by virtue of the fact that he worked for a period of two weeks in July 2014, with the result that he would, in principle, be entitled to receive jobseeker’s allowance, as he had been rendered involuntarily unemployed and had registered as a jobseeker.
- 19 The referring court notes in that respect that, although the appellant in the main proceedings no longer claims before it, as he did before the High Court, that he was employed under a fixed term contract during that period, he nevertheless maintains that, since Article 7(3)(c) of Directive 2004/38 uses the disjunctive coordinating conjunction ‘or’, that provision covers two distinct situations. The first part of the provision (‘is in duly recorded involuntary unemployment after completing a fixed-term employment contract of less than a year’) concerns, it is argued, the termination of fixed-term employment contracts of less than a year, whereas the second part (‘after having become involuntarily unemployed during the first 12 months’) does not concern the termination of fixed-term employment contracts but rather the termination of employment contracts of more than a year occurring during the first 12 months of employment of the person concerned. That distinction is said to be borne out by the fact that the first part of the provision refers to ‘duly recorded’ unemployment, while the second part requires the worker to have ‘registered as a jobseeker with the relevant employment office’. It would make no sense to impose such a requirement in relation to a person in ‘duly recorded’ unemployment.

20 The referring court has doubts, however, as to the correctness of that interpretation. It notes, first of all, that it is not clear from the interpretation advocated by the appellant in the main proceedings whether the expression ‘first 12 months’ refers to the period following arrival in the host Member State or the period of employment in that Member State. It observes, in addition, that that interpretation sits uneasily with one of the underlying objectives of Directive 2004/38, namely the objective of striking a fair balance between safeguarding the free movement of workers, on the one hand, and ensuring that the social security systems of the host Member State are not placed under an unreasonable burden, on the other.

21 In those circumstances, the Court of Appeal decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Where a citizen of another EU Member State, after his first 12 months of exercising his right of free movement, arrives in the host [Member] State and works (otherwise than [on] a fixed-term contract) for a two-week period for which he is remunerated and thereafter becomes involuntarily unemployed, does that citizen thereby retain the status of a worker for no less than a further six months for the purposes of Article 7(3)(c) and Article 7(1)(a) of Directive [2004/38] such as would entitle him to receive social assistance payments or, as the case may be, social security benefits on the same basis as if he were a resident citizen of the host State?’

### Consideration of the question referred

22 By its question, the referring court asks, in essence, whether Article 7(1)(a) and (3)(c) of Directive 2004/38 must be interpreted as meaning that a national of a Member State who, having exercised his right to free movement, worked in another Member State for a period of two weeks, otherwise than under a fixed-term contract, before becoming involuntarily unemployed, retains the status of worker for no less than a further six months for the purposes of those provisions and, as a result, is entitled to receive social assistance payments or, as the case may be, social security benefits on the same basis as if he were a national of the host Member State.

23 It should be borne in mind that the purpose of Directive 2004/38, as may be seen from recitals 1 to 4 thereof, is to facilitate the exercise of the primary and individual right to move and reside freely within the territory of the Member States, which is conferred directly on citizens of the Union by Article 21(1) TFEU, and that one of the objectives of that directive is to strengthen that right (see, to that effect, judgments of 25 July 2008, *Metock and Others*, C-127/08, EU:C:2008:449, paragraph 82, and of 5 June 2018, *Coman and Others*, C-673/16, EU:C:2018:385, paragraph 18 and the case-law cited).

24 Article 7(1)(a) of Directive 2004/38 provides, thus, that all Union citizens have the right of residence for a period of longer than three months on the territory of a Member State other than that of which they are a national, provided that they have the status of worker or self-employed person in the host Member State.

25 In the present case, it is clear from the order for reference that the referring court, which has not questioned the Court in this regard, considers that the appellant in the main proceedings has the status of worker within the meaning of the latter provision, on account of the activity that he pursued in the host Member State for a period of two weeks.

26 Article 7(3) of that directive provides that, for the purposes of Article 7(1)(a) of the directive, a Union citizen who is no longer a worker or self-employed person in the host Member State will nevertheless retain the status of worker or self-employed person in certain circumstances, which the Court has held are not listed exhaustively in paragraph 3 (judgment of 19 June 2014, *Saint Prix*, C-507/12, EU:C:2014:2007, paragraph 38), including when he becomes involuntarily unemployed.

- 27 Article 7(3)(b) of Directive 2004/38 provides in that regard that a Union citizen who ‘is in duly recorded involuntary unemployment after having been employed for more than one year’ in the host Member State retains the status of worker, without any condition as to duration, provided that he has registered as a jobseeker with the relevant employment office.
- 28 However, it is apparent from the very wording of the question referred for a preliminary ruling and from the explanations provided by the referring court that the question concerns only the activity pursued by the appellant in the main proceedings for a period of two weeks, with the result that, in any event, he is not covered by the provisions of Article 7(3)(b) of Directive 2004/38.
- 29 Article 7(3)(c) of Directive 2004/38, however, provides that a Union citizen who ‘is in duly recorded involuntary unemployment after completing a fixed-term employment contract of less than a year or after having become involuntarily unemployed during the first 12 months’ also retains the status of worker, for no less than 6 months, provided that he has registered as a jobseeker with the relevant employment office.
- 30 It follows from the actual wording of Article 7(3)(c) of Directive 2004/38, in particular from the use of the coordinating conjunction ‘or’, that that provision provides for the status of worker, whether employed or self-employed, to be retained, for no less than six months, in two situations.
- 31 The first situation concerns the case in which the worker was employed under a fixed-term employment contract of less than a year and became involuntarily unemployed at the end of that contract.
- 32 It is, however, undisputed, as is apparent from the wording of the question referred for a preliminary ruling and from the explanations provided by the referring court, that the appellant in the main proceedings did not work in the host Member State under a fixed-term contract during the period of activity at issue in the main proceedings, so that, in principle, he is not covered by this first situation.
- 33 The referring court asks, therefore, whether a worker such as the appellant in the main proceedings, who was employed in the host Member State for a period of two weeks, otherwise than under a fixed-term employment contract, before becoming involuntarily unemployed, is covered by the second situation, which concerns any worker who becomes ‘involuntarily unemployed during the first 12 months’.
- 34 As the Advocate General has noted at point 30 of his Opinion, it is not possible to determine on the basis of the wording of Article 7(3)(c) of Directive 2004/38 whether the appellant in the main proceedings is covered by this second situation.
- 35 That provision does not specify whether it applies to employed or self-employed persons or to both categories of worker, or whether it concerns fixed-term contracts of more than a year, contracts of indefinite duration or any type of contract or activity, or, lastly, whether the 12 months to which it refers relate to the period of residence or the period of employment of the worker concerned in the host Member State.
- 36 In that regard, it is important to note, first of all, that according to settled case-law, the need for a uniform application of EU law and the principle of equality require that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union (judgments of 21 December 2011, *Ziolkowski and Szeja*, C-424/10 and C-425/10, EU:C:2011:866, paragraph 32, and of 19 September 2013, *Brey*, C-140/12, EU:C:2013:565, paragraph 49).

- 37 Next, it should be borne in mind that, in interpreting a provision of EU law, it is necessary to consider not only its wording, but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 7 October 2010, *Lassal*, C-162/09, EU:C:2010:592, paragraph 49 and the case-law cited). The origins of a provision of EU law may also contain information relevant to its interpretation (see, to that effect, judgments of 27 November 2012, *Pringle*, C-370/12, EU:C:2012:756, paragraph 135; of 3 October 2013, *Inuit Tapiriit Kanatami and Others v Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 50; and of 24 June 2015, *T.*, C-373/13, EU:C:2015:413, paragraph 58).
- 38 Lastly, in view of the context of Directive 2004/38 and the objectives that it pursues, its provisions cannot be interpreted restrictively and must not in any event be deprived of their practical effect (see, to that effect, judgments of 11 December 2007, *Eind*, C-291/05, EU:C:2007:771, paragraph 43; of 25 July 2008, *Metock and Others*, C-127/08, EU:C:2008:449, paragraph 84; and of 5 June 2018, *Coman and Others*, C-673/16, EU:C:2018:385, paragraph 39).
- 39 In the present case, first of all, a reading of the provisions of Article 7(1)(a) in conjunction with those of Article 7(3) of Directive 2004/38 shows that entitlement to retain the status of worker as provided for in the latter provision is afforded to all Union citizens who have pursued an activity in the host Member State, whatever the nature of that activity — that is to say, whether they worked in an employed or self-employed capacity (see, to that effect, judgment of 20 December 2017, *Gusa*, C-442/16, EU:C:2017:1004, paragraphs 37 and 38).
- 40 The Court has held, in that regard, that the possibility for an EU citizen who has temporarily ceased to pursue an activity as an employed or self-employed person of retaining his status of worker on the basis of Article 7(3) of Directive 2004/38, as well as the corresponding right of residence under Article 7(1) of the directive, is based on the assumption that the citizen is available and able to re-enter the labour market of the host Member State within a reasonable period (judgment of 13 September 2018, *Prefeta*, C-618/16, EU:C:2018:719, paragraph 37 and the case-law cited).
- 41 It should be noted, next, that Directive 2004/38 — one of the purposes of which, in accordance with Article 1(a) thereof, is to lay down the conditions governing the exercise of the right of free movement and residence within the territory of the Member States by Union citizens and their family members — establishes a gradation with regard to the duration of the right of all Union citizens to reside in the host Member State, by providing, between the right of residence for up to three months referred to in Article 6 thereof and the right of permanent residence referred to in Article 16 thereof, for a right of residence for more than three months, which is governed by the provisions of Article 7 of the directive.
- 42 Article 7(1) of Directive 2004/38 thus guarantees all workers or self-employed persons, inter alia, a right of residence for more than three months in the host Member State.
- 43 For its part, Article 7(3) of the directive guarantees that all Union citizens in a position of temporary inactivity retain their status of worker and, consequently, their right to reside in the host Member State, also establishing a gradation with regard to the conditions for retaining that status, by reference to, as the Advocate General has noted in point 33 of his Opinion, first, the reason for the citizen's inability to work, in the case in point depending on whether he is unable to work because of illness or accident, involuntary unemployment or vocational training, and, second, the initial duration of his period of activity in the host Member State, that is, depending on whether that is longer or shorter than one year.
- 44 Thus, a Union citizen who has pursued an activity in an employed or self-employed capacity in the host Member State retains his status of worker indefinitely (i) if he is temporarily unable to work as the result of an illness or accident, in accordance with Article 7(3)(a) of Directive 2004/38, (ii) if he worked in an employed or self-employed capacity in the host Member State for more than one year



before becoming involuntarily unemployed, in accordance with Article 7(3)(b) of that directive (judgment of 20 December 2017, *Gusa*, C-442/16, EU:C:2017:1004, paragraphs 29 to 46), or (iii) if he has embarked on vocational training, in accordance with Article 7(3)(d) of the directive.

45 By contrast, a Union citizen who has pursued an activity in an employed or self-employed capacity in the host Member State for a period of less than one year retains his status of worker only for a period of time which that Member State may determine, provided it is no less than six months.

46 The host Member State may in fact limit the period during which a Union citizen who has pursued an activity as an employed or self-employed person in that State retains the status of worker, although that period may not be less than six months, in accordance with Article 7(3)(c) of Directive 2004/38, when that citizen is unemployed for reasons beyond his control before having been able to complete one year of activity.

47 That is the case, in accordance with the first situation provided for in that provision, when an employee's work terminates on the expiry of a fixed-term contract of less than a year.

48 That must also be the case, in accordance with the second situation provided for in that provision, in all situations in which a worker has been obliged, for reasons beyond his control, to stop working in the host Member State before one year has elapsed, regardless of the nature of the activity or the type of employment contract entered into for that purpose, that is to say, regardless of whether he worked as an employed or self-employed person and whether he entered into a fixed-term contract of more than a year, an indefinite contract or any other type of contract.

49 Such an interpretation is consistent with the principal objective pursued by Directive 2004/38, which is, as has been recalled in paragraph 23 of the present judgment, to strengthen the right of free movement and residence of all Union citizens, and with the objective specifically pursued by Article 7(3) thereof, which is to safeguard, by the retention of the status of worker, the right of residence of persons who have ceased their occupational activity because of an absence of work due to circumstances beyond their control (see, to that effect, judgments of 15 September 2015, *Alimanovic*, C-67/14, EU:C:2015:597, paragraph 60; of 25 February 2016, *García-Nieto and Others*, C-299/14, EU:C:2016:114, paragraph 47; and of 20 December 2017, *Gusa*, C-442/16, EU:C:2017:1004, paragraph 42).

50 That interpretation cannot, moreover, be considered to undermine the achievement of one of the other objectives pursued by Directive 2004/38, namely the objective of striking a fair balance between safeguarding the free movement of workers, on the one hand, and ensuring that the social security systems of the host Member State are not placed under an unreasonable burden, on the other.

51 It is true that recital 10 of Directive 2004/38 indicates that the directive seeks to prevent persons exercising their right of residence from becoming an unreasonable burden on the social assistance system of the host Member State during an initial period of residence.

52 However, it should be noted in that regard that the retention of the status of worker pursuant to Article 7(3)(c) of Directive 2004/38 presupposes, as has been stated in paragraphs 24 to 29 above, first, that the citizen concerned, before his period of involuntary unemployment, did actually have the status of worker within the meaning of that directive and, second, that he has registered as a jobseeker with the relevant employment office. In addition, the retention of that status during a period of involuntary unemployment may be limited to six months by the Member State concerned.

53 Lastly, an examination of the *travaux préparatoires* of Directive 2004/38, in particular the amended proposal for a Directive of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (COM(2003) 199 final), and the Council Common Position (EC) No 6/2004 of 5 December 2003 (OJ

2004 C 54 E, p. 12), confirms, as the Advocate General has stated in points 51 and 52 of his Opinion, the intention of the EU legislature to extend the benefit of retention of the status of worker, limited, as the case may be, to six months, to persons in involuntary unemployment after having worked for less than a year otherwise than under a fixed-term employment contract.

- 54 It follows that Article 7(1) and (3)(c) of Directive 2004/38 must be interpreted as meaning that a Union citizen, in a situation such as that of the appellant in the main proceedings, who acquired the status of worker within the meaning of Article 7(1)(a) of that directive in a Member State, on account of the activity he pursued there for a period of two weeks before becoming involuntarily unemployed, retains his status of worker for a period of no less than six months, provided that he has registered as a jobseeker with the relevant employment office.
- 55 It should also be borne in mind that, as stated in recital 20 and Article 24(1) of Directive 2004/38, all Union citizens residing on the basis of that directive in the territory of the host Member State, including those retaining their status of worker or self-employed person under Article 7(3)(c) of that directive, enjoy equal treatment with the nationals of that Member State within the scope of the FEU Treaty, subject to such specific provisions as are expressly provided for in the Treaty and secondary law.
- 56 It follows that, as the Advocate General has stated in point 55 of his Opinion, where national law excludes persons who have worked in an employed or self-employed capacity only for a short period of time from the entitlement to social benefits, that exclusion applies in the same way to workers from other Member States who have exercised their right of free movement.
- 57 It is, therefore, for the referring court, which alone has jurisdiction to interpret and apply national law, to determine whether, under that law and in accordance with the principle of equal treatment, the appellant in the main proceedings is entitled to the social security benefits or social assistance payments that he claims in the case in the main proceedings.
- 58 It follows from the foregoing that Article 7(1)(a) and (3)(c) of Directive 2004/38 must be interpreted as meaning that a national of a Member State who, having exercised his right to free movement, acquired, in another Member State, the status of worker within the meaning of Article 7(1)(a) of that directive, on account of the activity he pursued there for a period of two weeks, otherwise than under a fixed-term employment contract, before becoming involuntarily unemployed, retains the status of worker for a further period of no less than six months under those provisions, provided that he has registered as a jobseeker with the relevant employment office. It is for the referring court to determine whether, in accordance with the principle of equal treatment guaranteed in Article 24(1) of Directive 2004/38, that national is, as a result, entitled to receive social assistance payments or, as the case may be, social security benefits on the same basis as if he were a national of the host Member State.

### Costs

- 59 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

**Article 7(1)(a) and (3)(c) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC must be interpreted as meaning that a**

**national of a Member State who, having exercised his right to free movement, acquired, in another Member State, the status of worker within the meaning of Article 7(1)(a) of that directive, on account of the activity he pursued there for a period of two weeks, otherwise than under a fixed-term employment contract, before becoming involuntarily unemployed, retains the status of worker for a further period of no less than six months under those provisions, provided that he has registered as a jobseeker with the relevant employment office.**

**It is for the referring court to determine whether, in accordance with the principle of equal treatment guaranteed in Article 24(1) of Directive 2004/38, that national is, as a result, entitled to receive social assistance payments or, as the case may be, social security benefits on the same basis as if he were a national of the host Member State.**

Vilaras

Malenovský

Bay Larsen

Safjan

Šváby

Delivered in open court in Luxembourg on 11 April 2019.

A. Calot Escobar  
Registrar

K. Lenaerts  
President